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## State Water Resources Control Board

### **NOTICE OF PUBLIC HEARING AND PRE-HEARING CONFERENCE**

The State Water Resources Control Board  
Administrative Hearings Office  
will hold a Pre-Hearing Conference and a Public Hearing  
on the pending petition for Assignment of State-filed Application  
25517 and accompanying water right Application 25517X01 and  
the pending Request for Release from priority of State-Filed  
Applications 25513, 25514, 25517 (unassigned portion), 22235,  
23780, and 23781 in favor of water right Application 25517X01 of

#### **Sites Project Authority.**

**The Pre-Hearing Conference will begin on  
April 10, 2024, at 9:00 a.m.**  
and will be held by Zoom teleconference.

**The Public Hearing will begin on  
June 17 or 21, 2024, at 9 a.m.,  
and continue on July 9-12, 15, and 17, August 12-15, 19, 21, 22, and 27-29,  
September 16, 18, 23, 24, and 30, and October 2 and 8-10, 2024,  
beginning each day at 9 a.m.**  
and will be held by Zoom teleconference.

Representatives of parties and other people who want to participate in this pre-hearing conference or this hearing may access these Zoom teleconferences by using the following link and call-in information:

Please access Zoom by using the link:  
<https://waterboards.zoom.us/j/92567514898?pwd=NmxQUFJ3WW9MUThldUJJacmtobG9ZQT09> with Meeting ID: 925 6751 4898 and Passcode: 830366  
Or by calling in at: +16699009128,,92567514898#,,, \*830366# US (San Jose)

**Interested members of the public who would like to watch this hearing without participating may do so through the Administrative Hearings Office YouTube channel at: <https://www.youtube.com/@swrcbadministrativehearing728/featured>.**

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E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

## **PURPOSE OF HEARING**

The purpose of this hearing is to receive evidence to be considered in determining whether the State Water Resources Control Board (State Water Board or Board) should approve the petition for partial assignment of state-filed Application 25517, accompanying water right Application 25517X01, and petitions for release from priority of state-filed Applications 25513, 25514, 25517 (unassigned portion), 22235, 23780, and 23781 in favor of water right Application 25517X01 filed by the Sites Project Authority, and, if so, what specific terms or conditions should be included in any approvals.

## **BACKGROUND**

On May 11, 2022, the State Water Board Division of Water Rights (Division) received a petition for partial assignment of state-filed Application 25517 (priority date of September 30, 1977) and accompanying water right Application 25517X01 from Sites Project Authority (Applicant or Authority)<sup>1</sup> and petitions for release from priority of state-filed Applications 25513, 25514, 25517 (unassigned portion), 22235, 23780, and 23781 in favor of water right Application 2551X01. The Authority seeks these approvals for the construction and operation of a proposed new surface water storage project, the Sites Reservoir Project, which would entail the diversion and storage of water from the Sacramento River and two of its tributaries for later use in northern and southern California for multiple purposes, including agricultural use, municipal use, and fish and wildlife protection. The water would be stored in a proposed new reservoir (Sites Reservoir), which would be located near the town of Maxwell, approximately 17 miles west of the Sacramento River.

By letter dated August 26, 2022, the Division accepted Application 25517X01, but determined that the application was incomplete and outlined additional information needed before the application could be further processed. In response, the Authority filed amended application materials on January 6, 2023, and application errata on May 4, 2023, to correct or otherwise clarify information contained in the initial and amended application filings.

### **Water Right Application 25517X01**

In water right Application 25517X01, the Authority seeks to divert up to 1,500,000 acre feet per year (afy) from September 1 of each year to June 14 of the succeeding year from the Sacramento River, Funks Creek, and Stone Corral Creek. Funks Creek is tributary to Stone Corral Creek, which is tributary to the Sacramento River. The water would be diverted to storage in Sites Reservoir, with a capacity of 1,500,000 acre feet

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<sup>1</sup> Sites Project Authority is a joint powers authority comprised of irrigation districts and local government entities. The Sites Reservoir Project also has non-member participants and storage partners. (See Authority's water right application, Section 1 - Attachment 2; Exhibit AHO-17.)

and a surface area when full of 13,200 acres. The main impounding structures proposed by the Authority to create Sites Reservoir are Golden Gate Dam on Funks Creek, which is proposed to be 2,221 feet long and 287 feet high, and Sites Dam on Stone Corral Creek, which is proposed to be 781 feet long and 267 feet high.

The Authority proposes to divert water from the Sacramento River at a rate not to exceed 4,200 cubic feet per second (cfs) for conveyance to storage in Sites Reservoir using the existing Red Bluff Pumping Plant, which pumps water into the Tehama-Colusa Canal, and the existing Hamilton City Pump Station, which pumps water into the Glenn Colusa Irrigation District Main Canal. The proposed diversion rate from Funks Creek and Stone Corral Creek is equivalent to the inflows of these creeks at Golden Gate Dam and Sites Dam. The application proposes rediversion at Sites Dam, Golden Gate Dam, and fifty-two other points located in Alameda, Colusa, Contra Costa, Fresno, Kern, Los Angeles, Madera, Merced, Riverside, Sacramento, San Bernardino, San Joaquin, Solano, and Yolo Counties.

The proposed purposes of use are irrigation, municipal, domestic, industrial, water quality, fish and wildlife preservation and enhancement, and recreational. The application also identifies incidental uses of power, aquaculture, frost protection, stockwatering, and fish and wildlife preservation and enhancement. The proposed place of use consists of 32,691,036 acres within Glenn, Colusa, Sutter, Yolo, Yuba, Sacramento, Napa, Solano, Contra Costa, San Joaquin, Alameda, Stanislaus, Santa Clara, Santa Cruz, San Benito, Merced, Madera, Fresno, Kings, Tulare, Monterey, San Luis Obispo, Kern, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego, and Imperial Counties, and generally includes the service areas for the federal Central Valley Project and the State Water Project.

### **Proceedings by the Division of Water Rights**

On June 2, 2023, the Division issued a public notice of the Authority's water right application, the associated petition for partial assignment of a state-filed application, and petitions requesting release from priority of other state-filed applications. The notice provided instructions for filing a protest to the water right application and associated petitions. On July 12, 2023, the Division issued a revised notice extending the deadline to file a protest. The protest period ended on August 31, 2023.

The Division received protests to water right Application 25517X01 and the associated petitions from the individuals and entities listed in Attachment 3 of this notice. On October 31, 2023, the Applicant filed written answers to the protests. The Water Code requires protestants and the Applicant to make a good faith effort to resolve the protests within a 180-day protest resolution period for all new water right applications. The protest resolution period concluded on February 28, 2024. Each protestant must file a written status report for their protest and the Applicant must file a written status report for all protests with the State Water Board by March 29, 2024.

## **Assignment to the Administrative Hearings Office**

The State Water Board has determined that an evidentiary hearing will be necessary to resolve disputed issues of material fact concerning the Authority's application and petitions. (See Wat. Code, §§ 1350-1352.) In addition, the Board must hold a public hearing before acting on a petition to release from priority or assign a state-filed application. (Wat. Code, § 10504.1.)

Water Code section 1110 established the Administrative Hearings Office (AHO) within the State Water Board, effective July 1, 2019. Water Code section 1112, subdivision (c)(2), provides that the Board may assign an adjudicative hearing, in whole or in part, to the AHO. On November 13, 2023, the State Water Board's Executive Director issued a memorandum to the AHO, assigning the Authority's petition for partial assignment, accompanying water right application and petitions for release from priority of state-filed applications, in whole, to the AHO to conduct an adjudicative hearing and prepare a recommended water right decision or order for consideration by the State Water Board.

## **State-Filed Applications**

Water Code section 10500 authorized the state to file applications to appropriate water that "is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the state." (Wat. Code, § 10500.) These "state-filed applications" are held by the State Water Board, which may release from priority or assign any portion of an application when "the release or assignment is for the purpose of development not in conflict with such general plan or coordinated plan or with water quality objectives established pursuant to law." (Wat. Code, § 10504.) Until assigned, state-filed applications are not subject to the due diligence requirement that normally applies to water right applications. (Wat. Code, § 10500.) The State Water Board may not release from priority or assign a state-filed application if the county in which the water originates would be deprived of water necessary for its development. (Wat. Code, §§ 10505 & 10505.5.)

A state-filed application retains the priority date of the filing of the water right application by the state. (Wat. Code, § 10500.) A release from priority of a state-filed application in favor of a given application has the effect of reversing the relative priority of the state-filed application and the other application, but does not otherwise change the priority date of either right. (See State Water Board Order WR 83-1, p. 15.)

General information regarding state-filed applications, including petitions for assignment and release from priority of state-filed applications, is available on the State Water Board's website at:

[www.waterboards.ca.gov/waterrights/water\\_issues/programs/applications/state\\_filed\\_applications/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/state_filed_applications/)

### ***State-Filed Application 25517***

The Authority has petitioned for assignment of state-filed Application 25517, which has a calculated face value of 3,164,000 afy, and a priority date of September 30, 1977. Application 25517 is for a year-round diversion at a rate of up to 4,200 cfs from Willow Creek, Funks Creek, Stone Corral Creek, and the Sacramento River. The proposed points of diversion are within Tehama, Glenn, and Colusa Counties at Willow Dam, Funks Dam, Tehama-Colusa Canal, and Glenn Colusa Canal. The purposes of use are irrigation, domestic, municipal, industrial, recreation, incidental power, fish and wildlife enhancement, and water quality control. The proposed place of use is the service area of the State Water Project. Application 25517 has not been assigned in whole or in part to any other party, and there are no other pending petitions for assignment other than the petition filed by the Authority.

If the State Water Board approves the Authority's petition for partial assignment of Application 25517 and accompanying Application 25517X01, the water right permit issued to the Authority would have a September 30, 1977 priority date. The Authority has proposed to subordinate its right to divert under any such permit to some but not all of the existing, permitted rights that would otherwise be junior to the permit. (See Authority's water right application, Section 5 - Attachment 2 as modified by letters transmitted on December 28, 2023, and on January 26, 2024; Exhibits AHO-25, AHO-310 and AHO-312.)

### ***State-Filed Applications 25513, 25514, 22235, 23780, and 23781***

The Authority has petitioned for a release from priority of state-filed Applications 25513, 22514, 22235, 23780, 23781, and any unassigned portion of state-filed Application 25517 in favor of Application 25517X01. State-filed Applications 25513 and 25514 have a priority date of September 30, 1977, state-filed Application 22235 has a priority date of July 20, 1965, and state-filed Applications 23780 and 23781 have a priority date of May 10, 1971. None of these state-filed applications have been assigned in whole or in part to any other party, and there are no pending petitions seeking assignment of the applications. These state-filed applications are described in additional detail in Attachment 4 of this notice.

### **California Water Plan**

The State Water Board may approve the Authority's petitions for release from priority of and petition for assignment of state-filed applications only if the releases and the assignment are for a purpose not in conflict with any general or coordinated plans for the development, utilization, or conservation of water resources, including the California Water Plan. (See Wat. Code, §§ 10500, 10504.) The Water Plan, with any necessary amendments, supplements, and additions to the plan, is the master plan which guides the orderly and coordinated control, protection, conservation, development, management, and efficient utilization of the water resources of the state. (Wat. Code, § 10005(a).) The first modern Water Plan, published in 1957, emphasized the need for

developing and conveying water supply, thereby promoting what became the State Water Project. By the turn of the century, the plan had evolved to highlighting environmental protection, integrated watershed management, and the importance of inclusion, transparency, and sustainable resource management. The Department of Water Resources is currently in the process of updating the Water Plan, which was most recently updated in 2018.

## **Water Quality Control Plans**

Also relevant to the Authority's petitions are water quality control plans, which the State Water Board and Regional Water Quality Control Boards are required to adopt to reasonably protect beneficial uses of water, including municipal, industrial, agricultural, and fish and wildlife uses. These plans identify the beneficial uses of water of specified water bodies, water quality objectives to protect those uses, a program of implementation to achieve the objectives, and monitoring and other provisions to evaluate the effectiveness of implementation measures. There are two water quality control plans that cover areas that may be affected by the Sites Project. The Central Valley Regional Water Quality Control Board's Water Quality Control Plan for the Sacramento River and San Joaquin River Basins sets water quality objectives for those watersheds. The Bay-Delta Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta watershed (Bay-Delta Plan) is a separate water quality control plan developed by the State Water Board that establishes primarily flow-based water quality objectives and implementation measures. The Bay-Delta Plan includes Sacramento River flow and Delta salinity and outflow objectives, which were implemented by State Water Board Decision 1641 (D-1641). D-1641, which was adopted in 1999 and revised in 2000, placed interim responsibility on the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) for meeting the flow, salinity, and outflow objectives pursuant to agreements between DWR, Reclamation and other water users.

Since D-1641 was adopted, populations of native aquatic species have significantly declined. In 2017, the State Water Board completed a Scientific Basis Report indicating that existing flows and regulatory requirements included in the Bay-Delta Plan for the Sacramento River and Delta are insufficient to reasonably protect fish and wildlife beneficial uses. (Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows; Exhibit AHO-271.) As a result, the State Water Board is currently in the process of updating the Bay-Delta Plan to improve protections for fish and wildlife beneficial uses in the Delta, the Sacramento River and its tributaries, and Delta eastside tributaries (Sacramento/Delta updates). The potential Sacramento/Delta updates to the Bay-Delta Plan include:

1. Flow and other measures identified in the 2018 Framework for possible Sacramento/Delta updates to the Bay-Delta Plan (Exhibit AHO-272) that includes Sacramento/Delta tributary cold water habitat and inflow objectives of 55 percent

of unimpaired flow, with an adaptive range of 45 to 65 percent, and an inflow-based Delta outflow objective; and

2. A proposed voluntary agreements alternative consisting of voluntary physical habitat restoration actions and flow contributions from specified tributaries, including the Sacramento River, and Delta outflows that are intended to be additive to flows required by D-1641 and resulting from implementation of the 2019 Biological Opinions issued under the federal Endangered Species Act for the long-term operation of the State Water Project and the Central Valley Project.

The Board has not yet made a decision on how to move forward with the Sacramento/Delta updates to the Bay-Delta Plan. Key documents related to the Sacramento/Delta updates to the Bay-Delta Plan are identified as Exhibit AHO-279 and will be offered into the evidentiary record during this proceeding. The AHO Exhibits are available on the State Water Board's FTP site in the folder for this proceeding (see Document Availability section below).

Any approval by the State Water Board of the Authority's petition for partial assignment of state-filed Application 25517 or petitions for releases from priority of state-filed applications must be consistent with the applicable water quality control plans, including any flow requirements established by the Bay-Delta Plan.

### **Legal Requirements Applicable to Water Right Applications**

When acting on an application to appropriate water, the State Water Board must consider whether unappropriated water is available, whether the applicant will use the water sought to be appropriated beneficially, whether the appropriation is in the public interest, potential impacts of the appropriation on water quality and instream beneficial uses including impacts on fish and wildlife, and potential impacts on other public trust resources.

### ***Water Availability***

Before approving a water right application, the Board must determine that unappropriated water is available to supply the applicant. (Wat. Code, § 1375, subd. (d); Cal. Code Regs., tit. 23, § 695.) Unappropriated water does not include water that is or may be reasonably needed for useful and beneficial purposes pursuant to riparian rights, or is otherwise appropriated. (Wat. Code, §§ 1201, 1202; Cal. Code Regs., tit. 23, § 695.) In determining the amount of water available for appropriation, the State Water Board also must take into account the amount of water required to remain in the source to support instream beneficial uses, including the beneficial uses identified in any applicable water quality control plans, such as recreation and the preservation and enhancement of fish and wildlife. (Wat. Code, §§ 1243, 1243.5.) The Board may subject an appropriation to terms and conditions to avoid unreasonable impacts on fish and wildlife or other instream beneficial uses. The Board must also consider the effect of

approving a water right application on public trust resources and protect those resources where feasible and in the public interest. (*National Audubon Society v. Superior Court* (1983) 33 Cal. 3d 419, 446-447.) Protected uses of public trust resources include navigation, commerce, recreation, and the preservation of fish and wildlife habitat. (*Id.* at pp. 434-435.)

A related requirement is imposed by Fish and Game Code section 5937, which provides that the owner of any dam must allow sufficient water to pass through the dam to keep in good condition any fish below the dam. When authorizing the storage of water in an on-stream reservoir, the Board may impose terms and conditions as necessary to maintain in good condition fish living downstream of the proposed dam. (Fish & G. Code, § 5937; Cal. Code Regs., tit. 23, § 782.) In addition, it is the policy of this state that all state agencies, boards, and commissions shall seek to conserve endangered and threatened species and shall use their authority in furtherance of the purposes of the California Endangered Species Act. State agencies should not approve projects that would jeopardize the continued existence of any endangered or threatened species if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat that would prevent jeopardy. (Fish & G. Code, §§ 2053 & 2055.)

### ***Water Availability Analysis for Application 25517X01***

A water right application must include sufficient information to demonstrate a reasonable likelihood that unappropriated water is available for the proposed appropriation. (Wat. Code, § 1260, subd. (k).) The water availability analysis (WAA) that the Authority submitted with its application indicated that at least some unappropriated water is available at the Applicant's proposed points of diversion. The Division determined that the WAA did not, however, include the full range of variables, data inputs, and operational constraints sufficient to demonstrate a reasonable likelihood that the amount of water sought by the Authority is available for appropriation as proposed in the application. By letter dated August 26, 2022, the Division directed the Authority to provide an amended analysis that included additional operational constraints and instream flow requirements, including reasonably foreseeable updates to the Bay-Delta Plan by the State Water Board that could establish instream flow objectives of 55 percent of unimpaired flow for the Sacramento River and an associated inflow-based Delta outflow objective. The Division also requested the Authority to conduct a quantitative analysis of how its proposed diversions would interact with the proposed voluntary agreements alternative for the Bay-Delta Plan.<sup>2</sup>

The Authority's January 2023 amended water availability analysis includes multiple approaches to evaluating water availability by comparing different estimates of water supply and demand and relying on different assumptions and datasets. For each approach, the amended WAA estimates water available for diversion and the project

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<sup>2</sup> Some of the members, non-member participants, and storage partners of the Authority are also parties to the proposed voluntary agreements.



yield (the amount of available water that the Authority could divert with the limitation of a 4,200 cfs combined maximum diversion rate at the proposed points of diversion on the Sacramento River). The results of the WAA vary widely depending on the approach and the hydrology in a given year.

A summary of the approaches used by the Authority in the amended WAA follows (see Authority's water right application, Section 16 attachments for details; Exhibits AHO-39 to AHO-47):

- a) The Applicant's "Historical Analysis" represents supply by the observed daily flow data from relevant stream gages and represents demand as the greater of the face value of downstream water rights, including rights junior to state-filed Application 25517, or required bypass flows within specified stream reaches. Water availability is estimated on a daily timestep over a 22-year period. This is the only approach that estimates water availability on Funks Creek and Stone Coral Creek.
- b) The CalSim II Analysis simulates operations of diversion and storage infrastructure and the amount of water in the system on a monthly timestep over an 82-year period based on historical hydrology; senior diverter demand, as represented by the 2020 level of diversion and use in the Sacramento Valley and the estimated 2030 level of diversion and use in the San Joaquin Valley; and various regulatory requirements, including the site-specific flow criteria used in the Historical Analysis. The amended WAA also applied the CalSim II approach to evaluate three additional scenarios with different potential future conditions including climate change.
- c) The Applicant's "Face Value Analysis" represents supply by monthly unimpaired flow and represents demand by the face value of water rights within the Sacramento River watershed. Water availability is estimated on a monthly timestep over a 93-year period. This approach does not take into account instream flow criteria.
- d) The WAA Tool developed by the Division uses monthly unimpaired flow to represent supply, face value or maximum entitlements of all senior diverters to represent demand, and a reasonably foreseeable possible instream flow demand of 55 percent of unimpaired flow for the Sacramento River and its tributaries. The analysis estimates water availability on a monthly timestep over a 101-year period.

The table below includes estimated average water availability at the Red Bluff Pumping Plant, average project yield (combined at both points of diversion on the Sacramento River), yield frequency (the percentage of years the Authority could divert any amount of water), and the maximum project yield in acre-feet per year (afy).\*

	<b>Average Available (afy)</b>	<b>Average Yield (afy)</b>	<b>Yield Frequency</b>	<b>Maximum Yield (afy)</b>
"Historical Analysis"	749,000	287,000	78%	1,236,000
CalSim II (Alternative 3A from Final EIR)	1,448,000	276,000	88%	1,055,000
"Face Value Analysis"	1,118,000	330,000	59%	1,383,000
Division's WAA Tool (without pending applications)	88,000	57,000	27%	565,000

\* Values are from Authority's water right application, Section 16 attachments: Amended Sites WAA Report, and App B - Division Water Availability Tool (Exhibits AHO-39 and AHO-40).

On June 16, 2023, the Authority submitted to the Division a technical memorandum describing how its potential diversions might interact with flows provided pursuant to the proposed voluntary agreements (see the Authority's water right application, Section 16 attachments, Analysis with Voluntary Agreements; Exhibits AHO-48 and AHO-49). The Authority asserts that its diversions would have limited impacts on existing or additional flows under the voluntary agreements. However, the Authority's technical analysis identified a potential for the Authority's diversions to reduce Delta outflows expected under the proposed voluntary agreements during limited periods of time.

### ***Area of Origin Protections***

Area of origin protections apply when approval of an application filed after January 1, 1985, would allow export of water by a water supplier from certain protected areas of the state, including the Sacramento River System and the Delta, for use outside of the protected areas. The State Water Board must determine whether the appropriation would deprive the areas either directly or indirectly of the prior right to all the water reasonably required to adequately supply beneficial needs of the protected areas, or any of the inhabitants or property owners therein. (Wat. Code, §§ 1215, 1215.5, 1216.)

### ***Reasonable and Beneficial Use and Public Interest Considerations***

In addition to determining that water is available for appropriation, the Board must determine that water diverted under a proposed appropriation will be put to reasonable and beneficial use and will comply with the constitutional prohibition against the wasteful or unreasonable diversion or use of water. (Cal. Const., art. X, sec. 2; Wat. Code, §§ 1240 & 1375, subd. (c); Cal. Code Regs., tit. 23, §§ 696 & 698.)

In addition, the Water Code directs the State Water Board to allow the appropriation of unappropriated water for beneficial purposes under such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated. (Wat. Code, §§ 1253, 1257.) The Board shall reject an application when in its judgment the proposed appropriation would not best conserve the public interest. (*Id.*, § 1255.)

In determining whether an appropriation would be in the public interest, the Board must consider, among other factors, whether the proposed appropriation is consistent with the California Water Plan and any other general or coordinated plan for the control, protection, development, utilization, or conservation of the water resources of the state. (Wat. Code, § 1256.) The Board must consider the relative benefit to be derived from all beneficial uses of the water sought to be appropriated and any reclamation or reuse of the water as proposed by the applicant. (*Id.*, § 1257.) The Board must consider applicable water quality control plans and may subject an appropriation to terms and conditions as it finds necessary to carry out such plans. (*Id.*, § 1258.) The Board shall also consider the state goal of providing a decent home and suitable living environment for every Californian. (*Id.*, § 1259.)

### **Access Issues**

In circumstances in which the applicant does not own the property or the infrastructure necessary to complete the appropriation, the applicant must demonstrate that it has obtained, or has the ability to obtain, necessary rights of access. (Cal. Code Regs., tit. 23, § 775.)

### **California Environmental Quality Act Compliance**

The Authority is the lead agency for the preparation of environmental documents required by the California Environmental Quality Act (CEQA) for the Sites Reservoir Project. The Authority circulated a Draft Environmental Impact Report in August 2017. On November 12, 2021, the Authority completed and circulated a Revised Draft Environmental Impact Report. On November 2, 2023, the Authority released the Final Environmental Impact Report (Final EIR), which was certified by the Authority's Board of Directors on November 17, 2023. The Authority filed a Notice of Determination as the CEQA lead agency for the Final EIR with the State Clearing House on November 21, 2023.

As a responsible agency under CEQA, the State Water Board must consider the Final EIR prepared by the Authority in determining whether to approve the Authority's petition for partial assignment of state-filed Application 25517, accompanying water right Application 25517X01, and petitions for release from priority of state-filed Applications 25513, 25514, 25517 (unassigned portion), 22235, 23780, and 23781 in favor of water right Application 25517X01. The Final EIR is identified as Exhibits AHO-61 to AHO-257 and will be offered into evidence.

For each significant environmental effect identified in a Final EIR that is within the Board's area of responsibility, the Board must make one or more of the following findings: (1) changes have been required in the project that mitigate or avoid the significant effect, (2) such changes are within the responsibility and jurisdiction of another public agency and have been or can and should be adopted by that agency, or (3) specific economic, legal, social, technological, or other considerations make the mitigation measures or project alternatives identified in the Final EIR infeasible. (Pub. Resources Code, §§ 21002.1, 21081; Cal. Code Regs, tit. 14, §§ 15091, 15093.).

Because the 30-day period to challenge the Authority's certification of the Final EIR has expired, the adequacy of the Final EIR for the Sites Project for purposes of CEQA compliance is not a hearing issue. (See Cal. Code of Regs., tit. 14, § 15096, subd. (e).) The parties will be permitted, however, to submit evidence and argument concerning the Final EIR to the extent that the evidence or argument relates to the hearing issues in this notice.

### **HEARING ISSUES**

The State Water Board will decide whether to approve the Authority's petition for partial assignment of state-filed Application 22517, petitions for releases from priority of state-filed Application 25513, 22514, 22517, 22235, 23780, and 23781 in favor of Application 25517X01, and Application 25517X01, based upon the evidentiary record developed during the hearing. Parties to the proceeding may submit exhibits and testimony relevant to the following issues to be considered during the hearing:

1. Should the State Water Board approve the Authority's petition for partial assignment of state-filed Application 22517, such that any permit issued pursuant to Application 22517X01 has a September 30, 1977 priority date? If so, what conditions, if any, including conditions to address the issues identified below, should be included in the approval?
  - a. Would partial assignment of state-filed Application 22517 be for purposes of development not in conflict with the California Water Plan or any other general or coordinated plan for the control, protection, development, utilization, or conservation of the water resources of the state, or with water quality objectives?
  - b. Would partial assignment of state-filed Application 22517 be in the public interest, in light of the fact that any permit issued pursuant to Application 22517X01 would have a priority date that is senior to existing, permitted rights with priorities junior to September 30, 1977, except for the specific water rights to which the Authority agrees to subordinate its permit?
  - c. Would partial assignment of state-filed Application 22517 deprive the counties in which the water originates of water necessary for the counties' development?

- d. If the petition for partial assignment of state-filed Application 22517 is approved, would the area of origin protections in Water Code sections 1215-1222 apply, given that those sections apply to applications filed after January 1, 1985, and state-filed Application 22517 was filed before that date? Even if those sections do not apply, does consistency with applicable plans or the public interest require subordination of exports from the Delta under any permit issued pursuant to Application 25517X01 to diversions for reasonable and beneficial uses within the areas of origin?
  - e. If the petition for partial assignment of state-filed Application 22517 is not approved, should the State Water Board consider Application 25517X01 as a water right application with a May 11, 2022 priority date, based on the date when the Authority filed Application 25517X01? If so, should the State Water Board also either i) consider the Authority's petition for partial assignment of state-filed Application 25517 as a petition for release from the priority of state-filed Application 25517 in favor of Application 25517X01, or ii) consider the Authority's petition for release from priority of state-filed Application 25517 in favor of Application 25517X01 to encompass the entirety of state-filed Application 25517?
2. Should the State Water Board approve the release from priority of state-filed Applications 25513, 22514, 22517, 22235, 23780, and 23781 in favor of Application 25517X01? If so, what conditions, if any, including conditions to address the issues identified below, should be included in the approval?
- a. Would a release from priority of state-filed Applications 25513, 22514, 22517, 22235, 23780, and 23781 in favor of Application 25517X01 be for purposes of development not in conflict with the California Water Plan or any other general or coordinated plan for the control, protection, development, utilization, or conservation of the water resources of the state, or with water quality objectives?
  - b. Would a release from priority of state-filed Applications 25513, 22514, 22517, 22235, 23780, and 23781 in favor of Application 25517X01 deprive counties in which the water originates of water necessary for the counties' development?
3. Should the State Water Board approve Application 25517X01 and issue a water right permit authorizing the appropriation of water? If so, what terms and conditions should be included in the permit, including conditions to address any of the issues identified below?
- a. Is water available for appropriation under the priority date of state-filed Application 22517? Is water available for appropriation if Application 25517X01 has a May 11, 2022 priority date? If so, when, under what circumstances, and in what amount is unappropriated water available to supply the Applicant?
    - i. Which of the approaches described in the Authority's amended WAA provides the most accurate estimate of water availability? Does some other

approach not included in the Authority's amended WAA but included in the evidentiary record for this proceeding provide a more accurate estimate of water availability?

- ii. Would the proposed appropriation interfere with the exercise of existing water rights so as to injure existing water right holders? If the application is approved, what terms and conditions should be included to protect existing water right holders from injury?
- iii. What amounts of water are needed to remain instream in the public interest for recreation and the preservation and enhancement of fish and wildlife, or for protection of other beneficial uses? If approved, what terms and conditions should be included in any permit to preserve instream flows needed (1) to ensure consistency with applicable water quality control plans, (2) to keep fish in good condition below the dams, (3) to avoid jeopardy to the continued existence of any endangered or threatened species, and to avoid the destruction or adverse modification of critical habitat, and (4) to protect public trust resources to the extent feasible and in the public interest?
- iv. What conditions, if any, should be included in any permit issued on Application 25517X01, in anticipation of the update to the Bay-Delta Plan?
  1. Should any permit issued pursuant to Application 25517X01 prohibit diversions until the State Water Board has updated and implemented the Bay-Delta Plan and determined what limitations on diversions under the permit will be needed to meet Bay-Delta Plan requirements?
  2. Alternatively, should any permit issued pursuant to Application 25517X01 be subject to interim requirements limiting diversions to ensure reasonable protection of beneficial uses pending the update and implementation of the Bay-Delta Plan?
  3. Should any permit issued pursuant to Application 25517X01 include conditions to protect proposed voluntary agreement flows or the flows to which proposed voluntary agreement flows are intended to be additive, in the event the Bay-Delta Plan is updated to include voluntary agreements?
- b. Would approval of Application 25517X01 allow export of water that would directly or indirectly deprive the Sacramento River System of the prior right to all the water reasonably required to adequately supply the beneficial needs of the area, or any of the inhabitants or property owners therein? Are there any conditions

that should be included in any approval of the application to ensure that exports do not deprive the Sacramento River System of water reasonably required in the area of origin?

- c. Would the water diverted under the proposed appropriation be put to reasonable and beneficial use? If approved, what terms and conditions should be included to ensure that the diversion and use of water is reasonable and beneficial?
  - d. Is the proposed appropriation in the public interest? If approved, what terms and conditions should be included to ensure that the diversion and use is in the public interest?
    - i. Is the proposed appropriation consistent with the California Water Plan and any other general or coordinated plan for the control, protection, development, utilization, or conservation of the water resources of the state?
    - ii. Does the proposed appropriation advance the state goal of providing a decent home and suitable living environment for every Californian?
    - iii. Would the proposed appropriation cause unreasonable adverse impacts to water quality, fish, wildlife, or public trust resources?
    - iv. What is the relative benefit to be derived from all beneficial uses of the water sought to be appropriated and any reclamation or reuse of the water as proposed by the applicant?
  - e. Has the Applicant obtained or demonstrated the ability to obtain necessary rights of access to occupy property or use existing works as proposed in the application?
4. Is there a feasible alternative or are there feasible mitigation measures within the State Water Board's authority that would substantially lessen or avoid any significant effect of the project identified in the Final EIR? If approved, what terms and conditions should be included in the permit to mitigate or avoid significant environmental impacts identified in the Final EIR?

### **PROPOSED PERMIT TERMS**

Each party to the proceeding shall submit proposed terms and conditions that would resolve any protest by the party to Application 25517X01 or that the party believes is necessary to satisfy the legal requirements for the State Water Board to approve Application 25517X01 and issue a water right permit, or submit a statement that no terms or conditions would resolve its protest or satisfy the legal requirements for the Board to approve the application. These proposed permit terms or statement that there are no appropriate conditions of approval shall be submitted to the AHO by the deadline for submittal of case-in-chief exhibits.

This request for proposed permit terms or statement of no appropriate conditions of approval is a request for additional information that the Board has determined is reasonably necessary to attempt to resolve the protests to Application 25517X01 under Water Code section 1334. Failure of a party to comply with this request may result in cancellation of the party's protest by the Board under Water Code section 1335.

### **HEARING OFFICER AND HEARING TEAM**

Presiding Hearing Officer Nicole Kuenzi will preside over the hearing in this matter. The Hearing Team will include State Water Board staff from the AHO, the Division, and the Office of Chief Counsel. State Water Board members may be present during the pre-hearing conference or during hearings; however, the State Water Board will not act on the Authority's application and petitions until after the hearing and preparation of the recommended decision or order by the hearing officer. Other staff members may be present and may assist the hearing officer throughout these proceedings and may consult with members of the executive management of the State Water Board and State Water Board members to discuss or deliberate on matters relevant to this proceeding.

### **PRE-HEARING CONFERENCE**

The hearing officer will hold a pre-hearing conference on the date and at the time listed on the first page of this notice. The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. The pre-hearing conference will **not** include discussion of the merits of any hearing issues other than procedural matters. Following the pre-hearing conference, the hearing officer may issue a procedural ruling letter and modify the hearing procedures or issues set forth in this notice in whole or in part.

The pre-hearing conference will address the following issues:

1. Should the hearing officer change any of the deadlines or hearing dates listed in this notice or make other changes to the hearing schedule?
2. Should the hearing officer set time limits that apply to oral summaries of written testimony during the hearing?
3. Should the hearing officer set time limits for cross-examination of witnesses?
4. Should the hearing officer amend any of the hearing issues identified in this hearing notice?
5. Should the hearing officer conduct a site visit, which may include participation of members of the hearing team and State Water Board members? If so, when should the site visit occur?



6. The AHO will be conducting this hearing by Zoom teleconference as described in section 14 below. Should the AHO conduct a hybrid hearing day to allow interested persons to present policy statements in-person or remotely?
7. Should a court reporter be retained for this hearing. If so, who will retain the court reporter and how will the transcripts be shared with the AHO and all parties?
8. Are there any other procedural issues concerning the hearing that the participants would like to raise?

To participate in the pre-hearing conference, please use the Zoom teleconference information provided on the first page of this notice. No in-person appearances will be allowed for this pre-hearing conference. All parties intending to participate in the evidentiary portion of this hearing are strongly encouraged to participate in the pre-hearing conference. Parties do not need to file pre-hearing conference statements. If any party wants to file a pre-hearing conference statement, then the party shall file the pre-hearing conference statement with the AHO and serve copies of it on the other parties listed in the attached service list.

### **HEARING SCHEDULE AND DEADLINES**

<b>Deadlines / Schedule</b>	<b>Date and Time</b>
Deadline for all parties to file initial Notices of Intent to Appear (NOI) at the hearing and deadline for any interested person who intends to give a policy statement to file an NOI.	<b>April 2, 2024.</b>
Pre-Hearing Conference.	<b>April 10, 2024, at 9:00 a.m.</b>
Deadline for parties to file case-in-chief witness lists.	<b>April 29, 2024.</b>
Deadline for parties to file case-in-chief exhibits, exhibit identification indices, and proposed permit terms.	<b>May 24, 2024.</b>
Hearing begins with policy statements.	<b>June 17 or 21, 2024, at 9:00 a.m.</b>
Deadline for all parties to file rebuttal witness lists.	<b>June 28, 2024.</b>
Evidentiary portion of hearing begins.	<b>July 9, 2024, at 9:00 a.m.</b>
Additional case-in-chief hearing days (as necessary).	<b>July 10-12, 15, and 17, 2024, starting at 9:00 a.m.</b>
Deadline for all parties to file rebuttal exhibits and rebuttal exhibit identification indices.	<b>August 2, 2024.</b>
Additional case-in-chief hearing days (if necessary).	<b>August 12-15, 19, 21, 22, and 27-29, 2024, starting at 9:00 a.m.</b>
Rebuttal hearing days (as necessary).	<b>September 16 &amp; 18, 23, 24, 30, 2024, and October 2, and 8-10, 2024, starting at 9:00 a.m.</b>
Deadline for parties to submit closing briefs.	<b>November 12, 2024.</b>

## **SUBMISSION OF DOCUMENTS TO AHO AND OTHER PARTIES**

All documents submitted to the AHO shall be addressed and submitted by one of the following methods:

<b>Method</b>	<b>Address</b>
By e-mail (preferred method for documents other than exhibits):	<a href="mailto:sites-wr-application@waterboards.ca.gov">sites-wr-application@waterboards.ca.gov</a> With subject line “ <b>Sites Project Authority Application 22517X01</b> ”
By Mail:	State Water Resources Control Board Administrative Hearings Office P.O. Box 100 Sacramento, CA 95812-0100
By Hand-Delivery:	Joe Serna Jr. CalEPA Building Administrative Hearings Office 1001 I Street Sacramento, CA 95814
By uploading to FTP (exhibits):	All participants must submit exhibits by uploading them to the State Water Board’s FTP site.

Please see the part of this notice below titled “PROCEDURES FOR THIS WATER RIGHT HEARING” for more information regarding hearing procedures, submission of documents, and proofs of service.

## **DOCUMENT AVAILABILITY**

The AHO has moved documents maintained by the Division for the Authority’s application and petitions to a folder on the State Water Board’s FTP site. The FTP folder for this proceeding may be accessed at <https://ftp.waterboards.ca.gov/>. Anyone may view and download documents from the FTP site. To access the FTP folder for this proceeding, please send an email to [sites-wr-application@waterboards.ca.gov](mailto:sites-wr-application@waterboards.ca.gov) with “Request for Sites-ftp login credentials” in the subject line.

The AHO has included documents in the initial administrative record for this proceeding. The AHO has marked some of the documents that it has filed in the FTP folder for this hearing as exhibits and created an exhibit identification list for these AHO exhibits which is also available in the FTP folder for this hearing.

## **AHO WEBPAGE AND NOTICES**

Subject to legal limitations, including the requirements for Internet website accessibility in Government Code section 11546.7, the AHO will post all notices and other documents regarding these proceedings on the AHO’s Internet webpage at [www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/](http://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/)

## **HEARING LIVE-STREAM AND RECORDING**

The pre-hearing conference and hearing will be live-streamed through the AHO's YouTube channel, accessible by clicking on the link provided below. The live-stream will consist of a morning session and an afternoon session. To view the morning session, click the link identified as "morning." The morning session will conclude at the lunch break. To view the afternoon session, click the link identified as "afternoon." The afternoon session will begin after the lunch break.

After the conclusion of the hearing, a recording of the morning and afternoon YouTube live-stream sessions will be available on the AHO's YouTube channel. These recordings will include automatic captions for accessibility.

The live-stream and recordings may be accessed at the following link by clicking on Live and Videos, respectively:

<https://www.youtube.com/@swrcbadministrativehearing728/featured>.

## **PROHIBITION ON EX PARTE COMMUNICATIONS**

While this proceeding is pending, ex parte communications between any party, party representative, or interested person and any member of the hearing team or State Water Board member are prohibited. Ex parte communications include any type of communication regarding this proceeding that occurs between a party or interested person and the hearing officer, a member of the hearing team, or a State Water Board member without notice and an opportunity for all parties to participate. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) Additional information about ex parte communications is in response number 16 of the AHO's FAQ posted at [www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/docs/2022/aho-faq.pdf](http://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2022/aho-faq.pdf). (See response to FAQ 16.)

If any party wants to communicate with any member of the hearing team, or any Board member, at any time while this proceeding is pending regarding any procedural or substantive issue regarding this proceeding, including any issue regarding the pre-hearing conference, hearing procedures or filing of documents, then that party shall make such communication in writing (by e-mail or letter) and serve all other parties with copies of the communication and include a proof of service demonstrating such service of the written communication to the AHO. A party may provide this proof of service through a formal proof of service or by other verification. For e-mails, the verification shall be a list of the e-mail addresses of the parties or their representatives in an electronic mail "cc" (carbon copy) list. For letters, the verification shall be a list of the names and mailing addresses of the other parties or their representatives in the cc portion of the letter.

If the AHO receives any substantive or potentially controversial procedural communication regarding this proceeding that is addressed to the AHO, a Board

member or any other member of the hearing team, then the AHO will file a copy of the communication in the appropriate folder within the State Water Board's FTP folder for this proceeding.

Please do not attempt to communicate by telephone or in person with AHO staff or any hearing team member regarding this proceeding, because other parties would not be able to participate in such communications. If oral communications with any members of the hearing team are necessary to discuss any procedural or substantive issue, then the AHO will set up a conference call in which representatives of all parties may participate. Any party may request such a conference call at any time using the written communications protocols described above.

### **PROCEDURES FOR THIS WATER RIGHT HEARING**

The following procedures apply to this hearing. The hearing officer may amend these procedures before, during, or after the hearing, as appropriate and at the hearing officer's discretion.

**1. HEARING PROCEDURES:** The AHO will conduct this hearing according to the procedures for hearings set forth in California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760. Copies of these regulations are posted on the State Water Board's website: [www.waterboards.ca.gov/laws\\_regulations](http://www.waterboards.ca.gov/laws_regulations). If there is any conflict between any provision of this notice and any provision of these regulations or any applicable statute, then the provision of the regulation or statute shall apply to this hearing.

Consistent with California Code of Regulations, title 23, section 648.5, unless the hearing officer determines otherwise before or during the hearing, each party may make an opening statement, present witnesses and exhibits, cross-examine opposing parties' witnesses, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if that witness were under cross-examination. The hearing officer may allow parties to present closing arguments or submit closing briefs. These procedures are described in more detail in section 10. The hearing officer may issue rulings regarding these procedures before or during the hearing.

The AHO encourages parties with common interests to work together to make unified presentations and to take other actions to make the hearing process more efficient.

Parties may file any requests for exceptions to these hearing procedures in writing with the AHO and must serve any such requests on the other parties. To provide time for parties to respond, the hearing officer normally will not rule on procedural requests filed in writing until at least five days after receiving the request, unless the hearing schedule requires an earlier ruling.

**2. SETTLEMENTS:** In water right permitting matters, the parties normally include the applicant or petitioner and protestants. The applicant or petitioner and protestants may engage in private settlement discussions, and may, or may not, include any other persons in those discussions. No representative of the AHO or hearing team will participate in such settlement discussions. If the parties or their representatives sign a written settlement agreement, then they shall promptly file a copy of the signed agreement with the AHO.

Although the hearing officer may authorize other persons to participate in the hearing as parties, such authorizations do not necessarily allow those persons to participate in any settlement discussions between the applicant or petitioner and protestants in water right permitting matters.

**3. PARTIES:** As provided in California Code of Regulations, title 23, section 648.1, subdivision (b), parties to this proceeding are the Sites Project Authority and the protestants listed in Attachment 3 of this notice.

Each person or entity that wants to participate in the hearing must file a Notice of Intent to Appear, as described in section 5. The hearing officer may allow a person or entity not identified as a party in this notice to participate in the hearing as a party if the person or entity timely files a Notice of Intent to Appear and demonstrates good cause. (See Cal. Code Regs., tit. 23, § 648.1, subd. (a) & (b).) With the exception of parties identified in this notice, a person or entity that wants to participate as a party must include an attachment to the Notice of Intent to Appear demonstrating good cause as to why the hearing officer should allow the person or entity to participate in the hearing as a party rather than as an interested person presenting a policy statement. In determining whether the person or entity has demonstrated good cause, the hearing officer will consider, among other potentially relevant factors, whether the person's or entity's legal rights, duties, privileges, or immunities may be substantially affected by the proceeding and whether the interests of justice and the orderly and prompt conduct of the proceeding may be impaired by allowing the intervention.

The hearing officer may impose limitations on any party's participation in the hearing. (See Gov. Code, § 11440.50, subd. (c).) The hearing officer also may designate persons or entities that do not file timely Notices of Intent to Appear as parties, for good cause shown and subject to appropriate conditions. Except as specifically provided in this notice or by ruling of the hearing officer, the hearing officer will allow only parties to present evidence, make objections, examine witnesses, and file closing briefs.

Although representation is not required, a party without an attorney should consider hiring one if the hearing involves complex legal issues. Some attorneys provide legal services free of charge ("pro bono assistance"). The AHO maintains a list of attorneys who may provide pro bono assistance before, during, and after the hearing on the AHO's webpage under the heading "AHO Procedures & FAQs."

**4. POLICY STATEMENTS BY INTERESTED PERSONS:** As provided in California Code of Regulations, title 23, section 648.1, subdivision (d), the hearing officer normally will allow interested persons who are not designated as parties to present or submit non-evidentiary policy statements. Interested persons should submit any written policy statements before the hearing or submit or summarize them orally at the beginning of the hearing. The hearing officer will not permit a person or entity that appears and presents only a policy statement to make objections to parties' exhibits or testimony, offer evidence, conduct cross-examination, make legal arguments, or otherwise participate in the evidentiary hearing. The AHO will not add such persons or entities to the service list.

Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons who want to make oral policy statements during the hearing are requested to file a Notice of Intent to Appear, using the form in this notice (Attachment 1), indicating an intent to make only a policy statement. The hearing officer may impose time limits on presentations of oral policy statements or oral summaries of written policy statements.

The AHO requests that interested persons and entities who file written policy statements with the AHO serve copies of their statements on all parties before the person or entity presents such statements or summaries of them during the hearing. See section 8 for details regarding electronic submittals of documents.

**5. NOTICES OF INTENT TO APPEAR AND WITNESS LISTS:** As provided in California Code of Regulations, title 23, section 648.4, all people and entities that want to participate in the hearing as parties must file a Notice of Intent to Appear, using the form in this notice (Attachment 1), with the AHO before the deadline specified in this notice. The AHO may interpret a failure to file a Notice of Intent to Appear by this deadline as a decision not to appear. In matters regarding water right applications, the requirement to file a Notice of Intent to Appear by the deadline is a request for additional information pursuant to Water Code section 1334. In matters regarding water right petitions, the requirement to file a Notice of Intent to Appear by the deadline is a request for additional information pursuant to Water Code section 1703.5. In such matters, the Board may cancel an application, petition or protest if the applicant, petitioner or protestant does not file a Notice of Intent to Appear by the deadline.

As discussed in the preceding section, the AHO requests that any interested person who will not be participating as a party and will be presenting only a non-evidentiary oral policy statement or oral summary of a written policy statement file a Notice of Intent to Appear before the deadline and specify in the notice that the person only will be presenting an oral policy statement or summary.

Parties who intend to present case-in-chief or rebuttal testimony must submit, by the deadline specified in this notice, a witness list using the forms in this notice (Attachment 2). (See section 6 for requirements that apply to written testimony.) If a party intends to

call any expert witnesses, the party shall designate each expert witness as an expert witness in the party's witness list.

Parties that do not intend to present cases-in-chief but want to cross-examine witnesses or present rebuttal testimony should so indicate on their Notices of Intent to Appear.<sup>3</sup> A party that decides not to present a case-in-chief after having submitted a witness list should notify the AHO and the other parties as soon as possible.

Parties that are not willing to accept electronic service of hearing documents must check the appropriate box on the Notice of Intent to Appear. Because service of documents to such parties normally will be by U.S. Mail, such parties will experience delays in receiving hearing documents.

The AHO will maintain a current service list with the names of parties and their contact information for each person or entity that has submitted a Notice of Intent to Appear or asked to be on the updated service list and will post this service list on the State Water Board's FTP site in the folder for this proceeding. The service list will indicate if any party is not willing to accept electronic service.

**6. WRITTEN PROPOSED TESTIMONY AND OTHER EXHIBITS:** Exhibits include all written proposed testimony, statements of qualifications of expert witnesses, summary slides, and other documents to be submitted as evidence.

Exhibits also may include copies of Board decisions and orders that parties want to cite in their legal briefs and that are not posted on the Board's website at this link: [www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/](http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/). Parties should not submit copies of Board decisions and orders that the Board has posted on its website, and parties may cite such decisions and orders in their legal briefs without submitting copies of them as exhibits.

As provided in California Code of Regulations, title 23, section 648.4, subdivision (c), each party that wants to offer testimony into evidence shall submit written proposed direct testimony of each witness by the deadline for filing exhibits. The hearing officer will not permit a witness to give oral testimony that goes beyond the scope of the witness's written proposed testimony absent good cause. Each party shall designate each of its witness's written proposed testimony as a separate exhibit. A witness does not need to sign their proposed testimony. After each witness takes the oath, the

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<sup>3</sup> A party is not required to present evidence as part of a case-in-chief. The hearing officer will allow parties not presenting evidence as cases-in-chief to participate through opening statements, cross-examination, and rebuttal, and to present closing statements or briefs, if the hearing officer allows other parties to present such closing statements or briefs.

hearing officer or legal counsel for the party who called the witness will ask the witness to confirm that their written proposed testimony is their testimony for the hearing.

Each party must submit all of its witnesses' written proposed testimony with the party's other exhibits before the exhibit filing deadline. A party who offers expert testimony must submit an exhibit containing a statement of each expert witness's qualifications, in addition to a separate exhibit with the expert witness's written proposed testimony.

The AHO strongly encourages each party to prepare and submit as a separate exhibit for each witness a set of slides that summarize each witness's testimony. During the hearing, the party may use the exhibit with the slides to facilitate each of the party's witness's oral summary of their written proposed testimony. The parties must label the slides for each witness as a separate exhibit and submit it by the exhibit submittal deadline.

Parties are required to submit rebuttal testimony and exhibits to the AHO by the deadline indicated in this notice. See section 10, part c. for more information about rebuttal evidence.

The AHO has prepared an Excel spreadsheet containing a list of the documents in the administrative record, saved in the State Water Board's FTP folder for this proceeding, that the hearing officer will consider moving into the evidentiary record during the hearing. These documents are AHO exhibits. The AHO has posted this list in the State Water Board's FTP folder for this proceeding. The hearing officer may update or supplement this list during the hearing. Parties should not submit copies of AHO exhibits, and parties may cite such documents in their legal briefs without submitting copies of them as exhibits.

**7. EXHIBIT FORMATTING AND ORGANIZATION:** A party submitting evidence must file with the AHO both the exhibits and an Exhibit Identification Index, which is a list of exhibits in a Microsoft Excel format.

Each party should label exhibits with a short version of the party's name and sequential numbers. For example, CalWild's exhibits should be numbered CalWild-1, CalWild -2, etc. Do not use any sub-letters like 1a, 1b, etc. for exhibit numbers.

Each party should number each paragraph of each witness's written testimony sequentially, 1, 2, 3, etc. (This paragraph numbering will make it easier for the hearing officer and representatives of other parties to ask each witness questions about their written testimony.) Witnesses should not use any sub-paragraph letters like 1a, 1b, etc. in their written testimony. A witness may include headings like "Background," "Introduction," etc. for different sections of the witness's proposed written testimony but should not number or letter these headings and should not re-start the paragraph numbering in each section.



Each party must submit to the AHO the exhibits and exhibit identification indices for this hearing before the deadline specified in this Hearing Notice. The AHO may treat a party's failure to submit exhibits before this deadline as a waiver of the party's right to submit exhibits for the hearing and a waiver of the party's status as a party.

- a. The AHO requests that documents such as written proposed testimony, motions, written comments, and briefs shall be submitted to the AHO on pleading paper (with each line numbered in the left margin) using 12-point font and one-inch margins. If pleading paper is not available, the documents described above shall be double-spaced. For either format, the party shall sequentially number the paragraphs in the written testimony.
- b. Parties submitting exhibits based on complex technical analyses also must submit sufficient information so that a qualified independent expert could reproduce the results.

Parties submitting exhibits based on models or technical studies (such as reports, recommendations, or requirements) also must submit sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the models or studies, so that a qualified independent expert could reproduce the model or technical study and use it to obtain the same results.

- c. Documents uploaded by the parties normally must be in Adobe Portable Document Format (PDF), except that spreadsheets may be submitted in Microsoft Excel format, slide presentations may be submitted in Microsoft PowerPoint format, and exhibit identification indices must be submitted in Excel format.
- d. If a party wants to submit an exhibit in any other format, then the party shall submit a written request to the hearing officer, and serve copies of the request on all other parties on the service list, at least 10 days before the deadline for submitting exhibits. The request shall describe the other format, explain what software is necessary for the hearing officer and other parties to be able to review the exhibit in that format, and explain why the party believes it is appropriate for the party to submit the exhibit in that format. The hearing officer normally will rule on such requests before the exhibit submittal deadline.

**8. SUBMISSION OF DOCUMENTS AND FTP FOLDERS:** To expedite the exchange of documents, reduce paper use, and lower the cost of participating in the hearing, all participants must submit hearing documents in electronic form unless the hearing officer authorizes submission in different formats.

The State Water Board's FTP site may be accessed at <https://ftp.waterboards.ca.gov/>. All parties may use the shared account on this site to access and download documents in the administrative record for this hearing. This shared account is referred to in this notice as the "AHO-FTP Download Folders." The AHO will provide each party a unique account to upload the party's documents for this hearing. These accounts are referred to in this hearing notice as the "Parties' Upload Folders."

**a. State Water Board FTP Download Folders:**

The AHO created a folder for this proceeding on the State Water Board's FTP site. The folder for this proceeding will contain all administrative record documents related to this proceeding and may contain various subfolders, including subfolders for background documents and hearing documents. This folder is referred to in this notice as the "State Water Board FTP folder for this proceeding." Only AHO personnel may upload files to this folder. The AHO will post each party's hearing exhibits, exhibit identification indices and closing briefs to this folder promptly after each filing deadline. The AHO may add other administrative record documents to this folder during this proceeding (including recordings of hearings, correspondence, and the AHO's proposed order). The documents in this folder will be the AHO's administrative record for this proceeding. Anyone may download documents from the AHO-FTP Download Folder for any proceeding, including this proceeding, at any time.

If any party believes that the AHO should add documents to, or remove any documents from, this folder for this proceeding, then the party may file a request to the hearing officer for such action (by e-mailing the request to the AHO e-mail inbox), and shall transmit copies of the request to all other parties on the service list. The hearing officer will issue rulings or take other actions on such requests as the hearing officer deems appropriate.

**b. Upload Folders:**

The AHO will create a separate upload account for each party that files a Notice of Intent to Appear as a party for this hearing, so that the party may upload the party's exhibits and other documents to the folder for that account. In most cases, these accounts will be specific for each party and each hearing and the AHO will close the accounts for each hearing after the hearing and related proceedings have been completed. Only the party may upload files to the party's folder, and only the AHO may view, transfer and download files from this folder.

Each party shall upload its exhibits and Exhibit Identification Index to the party's folder on the State Water Board's FTP site before the exhibit filing deadline specified in this notice. A party that uploads hearing documents to the FTP site does not need to serve copies of the documents on the other parties, except that, if another party has not agreed to accept electronic service of documents, then the party uploading

hearing documents to the State Water Board's FTP site also shall serve paper copies of all such documents on that other party and shall file a proof of this service with the AHO. When a party has uploaded all of the party's exhibits to the State Water Board's FTP site, the party or party's representative shall send an email the AHO at [sites-wr-application@waterboards.ca.gov](mailto:sites-wr-application@waterboards.ca.gov), with copies to the other parties on the service list, notifying the AHO and the other parties that the party has uploaded the documents.

After the exhibit filing deadline, the AHO will move all filed exhibits and Exhibit Identification Indices from the parties' Upload Folders to the State Water Board FTP Download Folder and advise the parties that these documents are available for downloading from that folder. The AHO may rename or renumber exhibits that do not have proper exhibit names or numbers. If the AHO does this, then the AHO may create an electronic folder of unaltered documents that the party has submitted and a separate electronic folder of any documents the AHO has renamed or renumbered, in the AHO-FTP Download Folder.

If a party cannot upload exhibits to the State Water Board's FTP site, then the party may send two paper copies of all its exhibits to the AHO by mail or overnight delivery to:

<p>By Mail:</p> <p>State Water Resources Control Board          Administrative Hearings Office          P. O. Box 100          Sacramento, CA 95812-0100</p>	<p>By Hand or Overnight Delivery:</p> <p>Joe Serna Jr. CalEPA Building          State Water Resources Control Board          Administrative Hearings Office          1001 I Street          Sacramento, CA 95814</p>
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The deadline for filing paper copies, in lieu of electronically filing the exhibits, is the same as the exhibit filing deadline specified in this notice.

**9. PRE-HEARING CONFERENCE:** The hearing officer will conduct a pre-hearing conference before the hearing to discuss the pre-hearing and hearing schedules, the scope of the hearing, the status of protests, time limits, and any other appropriate procedural issues. This notice states the date and time of the pre-hearing conference. The hearing officer may issue notices of subsequent pre-hearing conferences. The hearing officer may issue a pre-hearing conference order after each pre-hearing conference.

**10. ORDER OF PROCEEDING:** The hearing officer will follow the order of proceedings specified in California Code of Regulations, title 23, section 648.5, unless the hearing officer decides to modify the order of proceeding before or during the hearing.

- a. **Policy Statements:** The hearing officer will allow interested persons to present oral policy statements and oral summaries of written policy statements at the start of the hearing before the presentations of cases-in-chief. Each oral policy statement or oral summary of written policy statements shall not exceed 5 minutes. The hearing officer may impose a shorter time limit based on the number of interested persons requesting to make an oral presentation.
- b. **Presentation of Cases-In-Chief:** Each party that so indicates in its Notice of Intent to Appear may present a case-in-chief addressing the key issues in this hearing notice. Each case-in-chief will consist of an opening statement, if the party decides to make one, and oral summaries of any witnesses' written proposed testimony. The hearing officer then will allow other parties to cross-examine the witnesses. The hearing officer may allow re-direct examination and re-cross examination of the witnesses. The hearing officer will decide whether to accept the party's exhibits into evidence upon the party's request or motion after completion of all examinations of the party's witnesses.
  - i. **Opening Statements:** At the beginning of each party's case-in-chief, the party or the party's attorney or other representative may make an opening statement that briefly and concisely states the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. A party may submit a written opening statement before the hearing or during the hearing before the party's case-in-chief and then, if desired, may provide an oral summary of the written opening statement. A party should include any policy-oriented statements in the party's opening statement. Each opening statement shall not exceed 10 minutes.
  - ii. **Oral Summaries of Written Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, all witnesses shall swear or affirm that the written and oral testimony they will present will be true and correct. A witness shall not read written proposed testimony into the record, but instead shall just provide a summary. A witness provides their direct testimony when they confirm that a designated exhibit is their testimony. The purpose of this part of the hearing is for the witness to briefly summarize their testimony. The hearing officer will not allow witnesses to provide oral direct testimony on matters not in their written proposed testimony. The hearing officer may establish time limits for parties to present oral summaries of their witnesses' written testimony.
  - iii. **Cross-Examination:** The hearing officer will permit other parties to cross-examine a party's witnesses on the witnesses' written submittals, oral summaries and clarifying testimony, and other relevant matters even if they are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officer will decide whether the party's witnesses will be cross-examined individually or as a panel or panels. Ordinarily, only a party or the party's representative will be permitted to cross-examine a witness,

but the hearing officer may allow a party to designate a person technically qualified in the subject being considered to cross-examine a witness. The hearing officer may establish time limits for the cross-examination of witnesses.

- iv. **Re-Direct and Re-Cross Examination:** The hearing officer may allow re-direct and re-cross examination of each party's witnesses. Any re-direct examination and re-cross examination permitted may not exceed the scope of the cross-examination and the re-direct examination, respectively. The hearing officer may establish time limits for any permitted re-direct and re-cross examination.
  - v. **Hearing Officer's Questions:** Consistent with California Code of Regulations, title 23, section 648.5, subdivision (b), the hearing officer may ask any witness questions, and may cross-examine any witness, at any time.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence another party has presented in its case-in-chief.

Parties must submit rebuttal testimony and exhibits to the AHO by the deadline stated in this notice. Written rebuttal testimony must specify the previously submitted testimony that is being rebutted. The hearing officer normally will limit cross-examination of witnesses offering rebuttal evidence to the scope of the rebuttal evidence.

- d. **Closing Briefs:** The hearing officer will set a schedule for the parties to file written closing briefs. The parties shall follow the procedures described above for uploading exhibits to the parties' folders on the State Water Board's FTP site when they upload their closing briefs. Each party shall mail a paper copy of its closing brief to any party that has not agreed to accept electronic service of documents and shall indicate this service in a proof of service filed with the AHO. No party may attach any documents of an evidentiary nature to the party's closing brief unless the hearing officer already has admitted the document into evidence or the document is the subject of an offer of proof made during the hearing. After the deadline for filing closing briefs, the AHO will file all closing briefs in the State Water Board's FTP folder for this proceeding.

**11. RULES OF EVIDENCE:** Government Code section 11513 shall apply to all evidence offered during the hearing. Consistent with Government Code section 11513, subdivision (d), a party may use hearsay evidence to supplement or explain other evidence, but over timely objection such evidence will not be sufficient by itself to support a finding unless the evidence would be admissible over objection in a civil action.

**12. COURT REPORTER:** The AHO intends to retain a court reporter for the pre-hearing conference in this proceeding. The hearing officer will discuss with the parties during the pre-hearing conference the retention of a court reporter for the hearing in this proceeding.

**13. OFFICIAL RECORD:** The official administrative record for this proceeding will be all the electronic files that the AHO has saved in the State Water Board's FTP folder for this proceeding. The official record of any part of this proceeding, such as a conference or hearing, is the audio-plus-video recording file of that part of the proceeding. For convenience, citations in written briefs to parts of this proceeding may cite the reporter's transcript rather than the portions of the audio-plus-video recordings of those parts of this proceeding.

**14. TELECONFERENCE HEARING:** The AHO is conducting this hearing by Zoom teleconference. The AHO may conduct limited portions of the hearing as a hybrid hearing, during which parties, witnesses, or interested persons may appear by Zoom teleconference or in person at a physical location at the CalEPA building at 1001 I Street, Sacramento, California. The AHO will record all status conferences, pre-hearing conferences, and hearings and will post an audio-plus-video file and a Zoom-generated transcript of each such proceeding, if available, in the AHO-FTP folder for this proceeding.

New users of Zoom may want to review Zoom's support guide:

<https://support.zoom.us/hc/en-us/categories/200101697>. Parties should test their devices' video and audio functions before the start of the hearing or pre-hearing conference. At the lower left-hand side of the Zoom window is a microphone and a video camera symbol. If there is a red line across the symbols, your microphone is on mute and video camera is off.

Please plan to call into the video conference at least 10 minutes before the scheduled hearing or pre-hearing conference time to ensure you can resolve any technical issues before the hearing or pre-hearing conference begins. You will initially be in a virtual waiting room and will be admitted to the hearing by a member of the AHO. When you speak, please turn your video on and unmute your microphone by clicking on the symbols in the lower left-hand side of the Zoom window. During the hearing, please be respectful and patient, raising your hand on-screen to get the hearing officer's attention. To reduce acoustic background noise, please remain on mute if you are not speaking. If you have other devices that are tuned into the meeting, please turn off the speaker volume of those devices. Other participants will be able to see your name, depending on your Zoom account settings. Other participants may also see the last three digits of your phone number unless you have called in anonymously. During the hearing, AHO staff may add designations of participants' names to the Zoom display.

To facilitate a clear understanding of who is speaking, the hearing officer will ask each person to identify themselves as necessary during the teleconference hearing. The hearing

officer prefers that parties participate by both audio and video through the Zoom meeting link. If this is not possible, then the hearing officer will accept audio-only participation.

If the device you are using freezes, please notify staff at [sites-wr-application@waterboards.ca.gov](mailto:sites-wr-application@waterboards.ca.gov) or by calling (916) 341-6940 and leaving a voicemail message and restart the device. AHO staff will be monitoring the e-mail inbox and voicemail and will notify the hearing officer. If restarting the device does not work, try calling into the hearing using the phone number provided with the Zoom meeting information on the first page of this notice.

In lieu of participating by Zoom, anyone may watch past or present AHO hearings at the following link: <https://www.youtube.com/@swrcbadministrativehearing728/featured>. Parties watching AHO hearings by this method will not be able to participate in the hearing, and will not be identified to anyone else.

Date: March 1, 2024

/s/ Nicole L. Kuenzi  
Nicole L. Kuenzi,  
Presiding Hearing Officer  
Administrative Hearings Office

Attachments:

- Attachment 1 – Notice of Intent to Appear (Blank Form)
- Attachment 2 – Witness Lists (Blank Forms)
- Attachment 3 – List of Protests and Protestants
- Attachment 4 – Description of State-Filed Applications
- Attachment 5 – Service List

**ATTACHMENT 1**

**NOTICE OF INTENT TO APPEAR**

\_\_\_\_\_ plans to participate in the water right hearing regarding Sites Project Authority Application 22517X01.

**1. Check only one of the following boxes:**

- Option 1:** I/we intend to present a policy statement only and, therefore, not to participate as a party in this hearing.
- Option 2:** I/we intend to participate as a party in this hearing by presenting any of the following: an opening statement, case-in-chief or rebuttal testimony, cross-examination, or a closing brief.

**[If you select Option 2 and intend to submit case-in-chief or rebuttal testimony, you must submit a witness list to the AHO by the applicable deadline.]**

**2. Reason for Requesting Party Status.** If you are not identified as a party in the Hearing Notice, describe why you should be allowed to participate as a party:

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**3. Fill in the following information of the participant, party, attorney, or other representative:**

Name (type or print):

Represented party (if applicable):

Mailing Address:

Telephone Number:

E-mail Address:

Optional:

I/we decline electronic service of hearing-related materials.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT 2**

**CASE-IN-CHIEF WITNESS LIST**

Witness Name	Expert Witness?		Subject of Proposed Testimony	Estimated Length of Oral Direct Testimony (minutes)
	Yes	No		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		

(If more space is required, please add additional lines or pages.)

**REBUTTAL WITNESS LIST**

Witness Name	Expert Witness?		Subject of Proposed Testimony	Estimated Length of Oral Direct Testimony (minutes)
	Yes	No		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		

(If more space is required, please add additional lines or pages.)

## ATTACHMENT 3

### LIST OF PROTESTS AND PROTESTANTS TO APPLICATION 25517X01

1. California Sportfishing Protection Alliance  
AquAlliance  
California Water Impact Network  
CalWild  
Fly Fishers of Davis  
Friends of the Swainson's Hawk  
Friends of the River  
Northern California Council of Fly Fishers International  
Restore the Delta  
Save California Salmon  
Sierra Club California  
The Winnemem Wintu Tribe  
Water Climate Trust
2. CalWild.
3. Center for Biological Diversity
4. Central Delta Water Agency  
Delta Farms Reclamation District No. 2030 (McDonald Island)  
Rudy Mussi Investment L.P.  
South Delta Water Agency  
Zuckerman-Mandeville, Inc.
5. Clarke F. Ornbaun.
6. Contra Costa Water District
7. County of San Joaquin
8. North Coast Rivers Alliance  
Pacific Coast Federation of Fishermen's Associations  
San Francisco Crab Boat Owners Association  
The Institute for Fisheries Resources  
The Winnemem Wintu Tribe
9. Richard Morat
10. San Francisco Baykeeper  
The Bay Institute  
Defenders of Wildlife  
Golden State Salmon Association

11. State Water Contractors.
12. Stephen Owens
13. T&M King Farms LLC
14. Trout Unlimited, Inc.
15. Water Climate Trust  
International Rivers  
The Winnemem Wintu Tribe  
Water Keeper Alliance

## ATTACHMENT 4

### DESCRIPTION OF STATE-FILED APPLICATIONS

#### ***State-Filed Application 25514***

State-filed Application 25514 has a priority date of September 30, 1977. The application proposes diversion of water from Thomes Creek, North Fork Stony Creek, Stony Creek, and the Sacramento River year-round at a rate of up to 10,000 cfs and diversion to storage of up to 9,117,000 afy. The proposed points of diversion are within Tehama, Glenn, and Colusa Counties. The purposes of use identified in the application are irrigation, domestic, municipal, industrial, recreation, fish and wildlife enhancement, water quality control, and flood control. The proposed place of use identified in the application is Glenn and Tehama Counties and the service area of the State Water Project.

#### ***State-Filed Application 25513***

State-filed Application 25513 is identical to Application 25514 except that it proposes non-consumptive use for power generation.

#### ***State-Filed Application 22235***

State-filed Application 22235 has a priority date of July 20, 1965. The application proposes year-round diversion to storage of up to 456,000 afy from Thomes Creek. The proposed points of diversion are within Tehama and Glenn Counties at Paskenta, Newville, and Rancheria Reservoirs. The purposes of use identified in the application are irrigation, domestic, municipal, industrial, and incidental recreation and fish and wildlife enhancement. The proposed place of use identified in the application is Glenn and Tehama Counties and the service area of the State Water Project.

#### ***State-Filed Application 23780***

State-filed Application 23780 has a priority date of May 10, 1971. The application proposes year-round diversion to storage of up to 1,100,000 afy from Cottonwood Creek. The proposed point of diversion is in Shasta and Tehama Counties at Dutch Gulch Dam. The purposes of use identified in the application are irrigation, domestic, municipal, industrial, recreation, fish and wildlife enhancement, and water quality control. The proposed place of use identified in the application is Shasta and Tehama Counties within the Cottonwood Creek watershed and the service area of the State Water Project.

#### ***State-Filed Application 23781***

State-filed Application 23781 has a priority date of May 10, 1971. The application proposes year-round diversion to storage of up to 900,000 afy from South Fork Cottonwood Creek. The proposed point of diversion is in Tehama County at Tehama

Dam. The purposes of use identified in the application are irrigation, domestic, municipal, industrial, recreation, fish and wildlife enhancement, and water quality control. The proposed place of use identified in the application is Tehama County within the Cottonwood Creek watershed, the areas immediately adjacent thereto, and the service area of the State Water Project

## ATTACHMENT 5

### SERVICE LIST

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